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[illegible] SUPREME COURT, U.S.

Supreme Court of the United States

[illegible] OCTOBER TERM, 1951

No. [illegible]

UNITED STATES OF AMERICA,
Petitioner,

v.

CLARA BELLE HENNING ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF OF JOSEPH S. KENNEDY, ADMINISTRATOR OF THE ESTATE OF BESSIE M. HENNING, AND ADMINISTRATOR D.B.N. OF THE ESTATE OF OTTO F. HENNING, RESPONDENT.

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Opinion Below.

The opinion of the United States Court of Appeals for the First Circuit (R. pp. 42-50) is reported in 191 F. (2d) 588.

Grounds of Jurisdiction.

This is an action arising under the laws of the United States, 38 U.S.C. c. 13, §§ 801-802. It comes to this Court on petition for writ of certiorari to the United States Court of Appeals for the First Circuit under 28 U.S.C. § 1254.

Statement of the Case.*

This is a case of interpleader between claimants for the proceeds of a policy of National Service Life Insurance. Eugene C. Henning, a sailor in the Navy, died July 4, 1945, holder of a policy for $10,000, in which his father, Otto F. Henning, was named as beneficiary. The father died five months later, December 8, 1945, without having completed a claim to the insurance.

Following Otto's (the father's) death, his widow, Bessie Henning (stepmother of the sailor), and his divorced former wife, Clara Henning (natural mother of the sailor), made claims for the proceeds to the Veterans Administration. The Administration, after investigation, awarded the proceeds to the stepmother, Bessie, as the last person *in loco parentis*. In October, 1948, before any payments were made, Clara, the natural mother, filed a complaint against the Government, and the latter interpleaded Bessie, the stepmother. Bessie filed an answer for herself and also as administratrix of the estate of her husband Otto. On June 30, 1949, before the case was reached for trial, Bessie died. Her administrator, Joseph S. Kennedy, was substituted as a party, representing the estates of both Otto and Bessie.

At the trial in the District Court the trial judge found as a fact that the sailor Eugene had been on friendly terms with both women. He lived with his natural mother, Clara, at the home of her mother, until he was eight (R. 20). After that he lived with his father and his stepmother, Bessie, from age fifteen until age twenty-nine, except for about two years when he was aged nineteen and twenty, during which he lived at a boarding house near his work (R. 21). "His stepmother [Bessie] treated him with all the customary affection and attention that a mother would

*This brief had to go to press before petitioner's brief was received, hence reference to facts as stated therein is not possible.

bestow on a natural child. She took care of his personal effects, did his laundry and furnished his meals which were no doubt paid for largely by the father" (R. 21).

Upon these facts the trial judge ordered payments made (A) to the administrator of Otto, the father, representing the instalments due during the five-month period by which Otto survived his son; (B) payments divided equally between Bessie's estate and Clara, for the period of forty-two and a half months during which Bessie survived Otto, and (C) the balance to Clara, for the period following Bessie's death in June, 1949.

Although Bessie's representative had in fact claimed the entire proceeds payable during the period (B) of forty-two months up to the death of Bessie on June 30, 1949, he did not appeal, being without funds for appellate expenses. The Government nevertheless prosecuted an appeal, which has now reached this Court.

Specification of Errors.

This respondent contends as to the questions raised on the petition for certiorari—

1. That the court below was correct in ordering payments under 38 U.S.C. § 801 et seq., National Service Life Insurance Act, upon the matured policy, to the administrator of the estates of beneficiaries who were alive when payments were due under the policy but who died before receiving actual payment.

2. That the court below was in error in ordering payments under section 802(h)(3)(C) of the Act to both the stepmother and the natural mother in equal shares. This respondent contends that those payments should be made solely to the stepmother, as the person who last bore the relationship of mother to the insured. This respondent confesses error to this extent in the decision of the lower courts.

3. That the lower court was justified in ordering the payment of the policy in 120 equal instalments in the absence of the election of any other method of payment by the beneficiary.

Argument.

I.

Benefit Instalments which Accrue during the Lifetime of a Deceased Beneficiary may be Paid to his Legal Representative.

This respondent contends that payments which accrued and should have been made to a beneficiary during the lifetime of the beneficiary should be paid to his representative after his death. The statute, 54 Stat. 1008 (38 U.S.C. c. 13, § 802), in its earlier form seems at first blush to indicate the contrary. Subsection (i) states: "The right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payments." Subsection (j) also provides: "No installments of such insurance shall be paid to the heirs or legal representatives as such . . . of any beneficiary, and in the event that no person within the permitted class survives to receive the insurance or any part thereof no payment of the unpaid installments shall be made" (as amended, Aug. 1, 1946, 60 Stat. 781).

The difficulty with a too literal reading of these words has been pointed out by the trial judge in this case, and by the Court of Appeals in *Baumet* v. *United States*, 177 F. (2d) 806. Unlike some other types of life insurance, these policies are intended to be paid in instalments over a long period of time, a minimum of ten years. The draftsmen of the Act realized that in many instances the beneficiary might die during the period. They made these obvious provisions to transfer the beneficial interest in the case of

such a death from the deceased beneficiary to the contingent beneficiary of the policy, or, if none, to the next survivor in the specified class of relatives. Apparently they did not visualize the possibility that is painfully present in the case at bar, namely, that a beneficiary might be alive for several years and might have made an appropriate claim, but because of the law's delay might yet die without ever receiving any portion of the instalments due. It may be pertinent to point out that this Act was passed in 1940, at a time of national emergency and without the extensive deliberations that preceded legislation in more normal times. See *Carpenter* v. *United States*, 168 F. (2d) 369, 371. After some experience with the administration of the Act, Congress amended this portion of the Act in 1946 (60 Stat. 783, 786).

It would certainly be utterly unfair to say that the Veterans Administration could, by holding up payments for years until the death of the last eligible beneficiary, force the escheat of all the proceeds of a policy. The equities are similar when, because of a bona-fide contest or other legitimate complications, a substantial delay occurs. It is submitted that the interpretation of the statute made by the Court of Appeals is correct. "To say the least it seems unlikely that Congress intended to pass legislation, particularly remedial legislation such as the Act under consideration, capable of producing such unjust, startling and capricious results" (*United States* v. *Henning*, 191 F. (2d) 588, 591).

To say that Congress would have further amended this provision in the Acts of 1951, Public Law 23, 82d Cong. 1st Sess., if it had intended no payments to administrators would be to ignore the interpretation by then put upon the Act in *Baumet* v. *United States*, 177 F. (2d) 806; cert. den. 339 U.S. 973.

II.

The Stepmother, Bessie, is the Parent who Last Bore that Relationship to the Insured.

It is clear that on the death of Eugene, the named beneficiary, his father, became entitled to the benefits of the policy. The effect of his father's subsequent death five months later has been discussed above. Clearly any payments accruing after Otto's death on December 8, 1945, could not go to the father or the father's representative as such. The statute, subsec. (h)(3)(C), provides that, in case of the decease of the named beneficiary, payments shall be made to certain classes of persons of whom the only possible ones involved in this case are "the parent or parents of the insured *who last bore that relationship*, if living, in equal shares." See 1942 amendment, 56 Stat. 657, 659.

Congressman Disney of Oklahoma explained this provision to his colleagues in debate as follows: "The third amendment places the parent who last bore that relationship in precedence over other parents; in other words, a person who stood in the relationship of loco parentis to the soldier for not less than a year immediately prior to his entrance into active service would take precedence over a natural parent" (88 Cong. Rec. 5932). And see S. Rep. 1430, H. Rep. 2312, 77th Cong., 2d Sess.

There is no doubt whatever, in point of fact, that Bessie, the sailor's stepmother, was *in loco parentis* and bore the relationship of mother toward him from the time he was fifteen years old until he was twenty-one, and indeed until he enlisted in the Navy. There is no doubt whatever that, as between Bessie and the natural mother, Bessie "last" bore the relationship. To rule otherwise is to make the word "last" in the statute utterly meaningless (*Baumet* v. *United States*, 191 F. (2d) 194; *Bland* v. *United States*, 185 F. (2d) 395). It also results in the absurdity of a person's having several mothers at once.

Consider, for example, the situation if Eugene had not designated his father as his individual beneficiary, but had died leaving it blank. On his death Otto and Bessie were living together in the place which the sailor thought of as home. They were clearly his parents and would take under subsection (h)(3)(C). But the ruling of the District Court (R. 22) would also include Clara as "first, last and all the time" a third parent, and would force a payment of one-third of the benefits to her simultaneously with the others. This would be an absurd and incongruous result, not contemplated or required by the language of the statute. See *Mansfield* v. *Hester*, 81 F. Supp. 772, 776; *Baumet* v. *United States*, 191 F. (2d) 194, 196; *Leyerly* v. *United States*, 162 F. (2d) 79, 85 (10th Cir.).

This respondent submits that the decision of the Board of Veterans Appeals (R. 18) was correct, that Bessie M. Henning alone was entitled to receive as beneficiary for the period December 9, 1945, to June 30, 1949, and the entire payments accruing under the policy during that period should be paid to her representative.

As to the further payments accruing after the death of Bessie in June 1949, this respondent makes no claim to those proceeds and has no interest in them. He would be content to see them paid to the adverse claimant, Clara, to avoid escheat, if that can be done under the statute. This was apparently allowed in the somewhat different case of *Strunk* v. *United States*, 80 F. Supp. 432, 435.

III.

The Court Properly Ordered Payments in 120 Monthly Instalments in the Absence of an Alternative Election by the Beneficiary.

When Eugene took out his policy, payments were designated to be made to any beneficiary over thirty years of

age in 120 monthly instalments. This was the original and the normal method of payment. The amendment of 1944 (58 Stat. 762) authorized the beneficiary to elect an alternative, a refund life income plan. This contemplates an affirmative act by the beneficiary in electing the alternative. If there is no such affirmative act, the normal payments are indicated. It is not questioned that all the possible beneficiaries were well over thirty years of age when the policy matured.

In the present case there is no record that Otto, Bessie or Clara have made such an election.

Under the circumstances they cannot complain that the court has awarded payments on the normal basis. Nor should the Government, which is supposedly a stake-holder, protest the manner of payments which is acceptable to the claimants.

This respondent submits that the Court of Appeals was correct in holding the election unnecessary and in sending the matter back for a more precise computation of the instalments.

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